IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 599 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SIRAMBHAI MOHANBHAI PRAJAPATI

Appearance:

1. Criminal Appeal No. 599 of 1996

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 24/07/2001

ORAL JUDGEMENT

The respondent accused was charged for the offence under Section 409 IPC before the Court of JMFC at Diyodhar (Sirohi Camp). The allegation against him was that during the period from 31.3.1980 to 6.5.1980, when

he was working as Talati-cum-Mantri of Camboi Gram Panchayat, he kept Rs. 261.50 paise on hands, which were later on deposited by him. Thus, the charge against the respondent accused was of temporary misappropriation of meagre amount of Rs. 261.50 paise. At the end of the trial, the learned Magistrate found him guilty for the offence of temporary misappropriation under Section 409 IPC and sentenced him to suffer RI for one month and to pay a fine of Rs. 300. The aforesaid order of conviction and sentence passed by the learned Magistrate was challenged by the respondent accused by way of Criminal Appeal No. 5/90 before the Court of Sessions Judge. The appeal came to be allowed by the learned Additional Sessions, Judge, Banaskantha at Palanpur on 17.4.1996, against which this appeal is filed by the State of Gujarat.

Having carefully gone through the judgement and order of acquittal passed by the learned Additional Sessions Judge in appeal filed by the respondent accused, I am fully convinced that no error was committed by the learned Additional Sessions Judge in setting aside the order of conviction and sentence passed by the trial Court against the respondent accused for the offence under 409 IPC. It has come on evidence that because of the sudden death of his father the respondent accused could not deposit the amount of Rs. 261.50 on time, but that cannot be said to be a temporary misappropriation. There was no intention on the part of the accused to either misappropriate the amount or misappropriate the same for a temporary period. Considering the facts and circumstances of the case, if the learned Additional Sessions Judge has allowed the appeal and interfered with the order of conviction and sentence passed by the trial Court, then this Court would not certainly interfere with the order of acquittal, in this acquittal appeal.

In view of the above discussion, this appeal fails and is dismissed.

(B.J.Shethna, J.)

*/Mohandas